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10/603,130

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Eric W. Liimatta

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EDGAR SPIELMAN  
ALBEMARLE CORPORATION  
451 FLORIDA BLVD.  
BATON ROUGE, LA 70801

EXAMINER

CORBIN, ARTHUR L

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/603,130  
Filing Date: June 24, 2003  
Appellant(s): LIIMATTA, ERIC W.

**MAILED**  
**NOV 15 2007**  
**GROUP 1700**

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John Sieberth  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 11, 2007 appealing from the Office action mailed March 28, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

6,514,556	HILGREN ET AL	2-2003
6,123,870	YANG ET AL	9-2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 4, 8, 10, 14-19, 23-31, 33, 34 and 38-44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Howarth in view of Hilgren et al and Yang et al. Howarth (pages 4-7 and page 17, line 9) discloses treating defeathered and eviscerated poultry carcasses with a microbiocidal composition as claimed by appellant, including sulfamic acid, a bromine source and an alkali metal base, using the same treatment procedures claimed by appellant, except for inside-outside washing with said composition. It would have been obvious to use inside-outside washing as one of the application procedures of said composition since it is well known to treat poultry carcasses with a microbiocidal composition using an inside-outside washing procedure, as evidenced by Hilgren et al (col. 17, lines 25-45). The sulfamic acid in the composition disclosed in Howarth obviously will function as a halogen, i.e. bromine, stabilizer since sulfamic acid is known to serve this purpose in bromine containing compositions used for biofoul control in food systems, as evidenced by Yang et al (cols. 2 and 3). The use of an automatic transport, e.g. conveyor belts, to transport carcasses through a treatment system is conventional in this art. Finding the optimum time for washing the carcasses (claims 1 and 31) with said composition, the optimum bromine residual of the composition used to treat the interior of the poultry carcasses and the optimum bromine residual used to treat the exterior of the poultry carcasses (claims 29,

30 and 38-41) would require nothing more than routine experimentation by one reasonably skilled in this art. Further, water rinsing to remove excess treatment composition and subsequent drainage of said water are conventional process steps.

#### **(10) Response to Argument**

Appellant's contentions with regard to reference to "toxic chlorinated compounds" used in Hilgren et al (col. 19, line 46) is not convincing since Hilgren et al suggests using alternative compounds in place of compounds that present such a toxic problem. According to col. 2, lines 20-30 of Hilgren et al, "toxic" refers to excessive chlorination when using hypochlorite as an antimicrobial. Reading the above passages in conjunction with each other would lead the skilled artisan to replace hypochlorite with one of the alternative antimicrobial compounds disclosed in Hilgren et al. Other chlorine compounds, which are not considered toxic, are not discouraged from use by Hilgren et al. Even if appellant is correct in his conclusion that Hilgren et al teaches avoiding use of all chlorine compounds, Hilgren et al is still properly relied upon for the concept of using a spray probe to treat the inside of eviscerated poultry carcasses with an antimicrobial compound as well as the concept of using an inside-outside washing technique to treat poultry carcasses with antimicrobials. However, appellant's jump from avoiding chlorine compounds used in Hilgren et al to avoiding bromine compounds in general because both are halogens has no basis in fact and is simply a conclusion drawn by appellant.

The Liimatta 132 declaration relied upon by appellant is not persuasive. It is not commensurate in scope with appellant's claims, which fail to recite the specific

temperatures and 30 second contact time used in the tests performed in said declaration. It does not describe the inside-outside washing technique used by appellant. It does not make a comparison with the closest prior art, viz. the bromine composition used in Howarth, which just happens to be the same composition used by appellant. If appellant's inside-outside washing procedure is a patentably distinguishing feature, then why do the declaration tests not describe use of his procedure? Finally, how does the fact that appellant's treatment composition, which is used in Howarth, provides better results at 30 seconds treatment time than at 600 seconds treatment time overcome the prima facie case of obviousness established in the above rejection? Wouldn't Howarth's treatment composition also produce the same results as described in said declaration?

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Arthur Corbin



Conferees:



Keith Hendricks



Romulo Delmendo

*Appeals Conference*